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13 JUL 2006

In re Application of :
DREXLER, Joannes Herman :
Application No.: 10/518,700 : DECISION
PCT No.: PCT/NL03/00453 :
Int. Filing Date: 20 June 2003 : ON REQUESTS UNDER
Priority Date: 20 June 2002 :
Attorney's Docket No.: 903-127 PCT/US : 37 CFR 1.497(d) and 1.42
For: CHILD SEAT :

This decision is in response to applicant's petition under 37 CFR 1.497, filed in the United States Patent and Trademark Office on 06 January 2006. Additionally, the declaration contains indicates that the inventor is deceased. The declaration has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 20 June 2003, applicant filed international application PCT/NL03/00453, which claimed a priority date of 20 June 2002. A copy of the international application was transmitted to the Office on 31 December 2003 by the International Bureau. The deadline for entry into the national stage in the United States was midnight on 20 December 2004.

On 20 December 2004, applicant filed a submission for entry into the national stage in the United States, accompanied by, *inter alia*, the U.S. Basic National Fee.

On 07 November 2005, the Office mailed Notification of Missing Requirements, indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the search fee, examination fee or oath or declaration was required.

On 06 January 2006, applicant filed a declaration, the instant request and the surcharge.

DISCUSSION

Request Under 37 CFR 1.497(d)

Applicant has filed a request to correct the inventive entity in the above application, but incorrectly identifies the current inventive entity. Applicant identifies the inventive entity as Joannes Herman Drexler (heir) and Cornelis Kees Drexler (heir), but the sole inventor listed for the application is Joannes Herman Drexler (deceased). Joannes Herman Drexler (heir) and Cornelis Kees Drexler (heir) are listed as applicants for the US only, not as inventors. It appears that applicant is attempting to utilize 37 CFR 1.497(d), when 37 CFR 1.42 is appropriate. For these reasons, applicant's request to add Cornelia Groen as an inventor is not addressed in detail.

Request Under 37 CFR 1.42

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The “legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.” 37 CFR 1.42.

The declaration must list the inventors and their citizenships and the legal representative and the legal representative’s citizenship, residence and postal address. See 37 CFR 1.497. The declaration appears to list the information for the heirs and for the deceased inventor. However, as set out below, the declaration is defective.

1. The declaration does not state that the heirs are the “sole heirs” of the deceased inventor or that the heirs are the “legal representatives” of the deceased inventor.

The declaration is executed by Cornelia Groen, Joannes Herman Drexler and Johanna Franciscus Antonia Rossen as heirs. Cornelia Groen and Joannes Herman Drexler (heir) are listed as heirs of the deceased inventor and Johanna Rossen is listed as heir of a deceased heir. The indication that Cornelia Groen and Joannes Herman Drexler are heirs of the deceased and that Johanna Rossen is the heir of deceased heir Cornelis Kees Drexler leaves open the possibility that there are other non-signing joint heirs. Further, if Johanna Rossen is an heir of the deceased inventor through her deceased husband, she should be identified as one of the sole heirs of the deceased inventor or as a legal representative of the deceased inventor. That she is an heir of a deceased heir does not clearly set out her relationship to the deceased inventor and the capacity in which she is signing the declaration, as required by 37 CFR 1.497(b)(2). In the alternative, Johanna Rossen could be listed as “sole heir” of the heir Cornelis Kees Drexler, one of three sole heirs of the deceased inventor.

A statement that the heirs are the sole heirs of the deceased inventor is construed as a statement that a legal representative has not been appointed, nor is one required to be appointed under applicable law and that the authority of the heirs corresponds to the authority of a legal representative. Proof of authority is not required. MPEP 409.01(b).

2. The declaration has been modified.

The declaration contains undated, non-initialed alterations, which are not permitted. 37 CFR 1.52(c)(1). Page 2 of the declaration executed by Cornelia Groen has had text blocked out and handwriting removed. It is improper for anyone, including counsel, to alter, rewrite or partly fill in any part of the application, including the oath or declaration, after execution of the oath or declaration by the applicant. MPEP 605.04(a).

3. Applicant has provided three different names for the deceased heir of the deceased inventor.

The declaration identifies the deceased heir as “Kees Cornelis Drexler” and “Cornelis Kees Cornelis”. However, he is identified on the international application and other papers as “Cornelis Kees Drexler.” Clarification of the discrepancy is required.

CONCLUSION

For the above reasons, applicant's request under 37 CFR 1.497(d) and under 37 CFR 1.42 are **REFUSED.**

A proper response is required within a period of **TWO (2) MONTHS** from the mail date of this decision. The response should be entitled "Renewed Request Under 37 CFR 1.42." Failure to timely response will result in the ABANDONMENT of this application. Any request for reconsideration of the request under 37 CFR 1.497(d) must be filed within **TWO (2) MONTHS** from the mail date of this decision and should be entitled "Renewed Request Under 37 CFR 1.497(d)". Extensions of time for both responses are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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